LIBELED: 9–1–55, S. Dist. Calif.

CHARGE: 502 (a)—the label of the article, while held for sale, contained false and misleading representations that the article was an adequate and effective treatment for hay fever, bronchial asthma, food allergies, chronic eczemas, and chronic sinusitis, and that it was adequate and effective for the symptomatic relief of such conditions.

DISPOSITION: In accordance with a stipulation entered into between the government and Associated Laboratories, Inc., New York, N. Y., the claimant, an order was entered on 10–18–55 for the removal of the case to the E. Dist. N. Y. On 6–28–56, the claimant having withdrawn its claim, a default decree of condemnation and destruction was entered.

5075. Amosan tooth powder. (F. D. C. No. 39036. S. No. 23–983 M.)

QUANTITY: 12 cartons, 12 pkgs. each, at Los Angeles, Calif.

SHIPPED: 2–14–56 and 3–14–56, from Newark, N. J., by Knox Co.

LABEL IN PART: (Pkg.) "Amosan Powder * * * Active Ingredients: Sodium Perborate and Sodium Bitartrate, flavored with Oil of Peppermint and Menthol * * * Contains 20 Envelopes Net wt. 1¼ Avoir. Oz."

ACCOMPANYING LABELING: (Leaflet enclosed in each package) "Amosan Powder For the Hygienic Care of the Mouth and Gums."

LIBELED: 4–16–56, S. Dist. Calif.

CHARGE: 502 (a)—the labeling of the article, when shipped, contained false and misleading representations that the article was an adequate and effective treatment for pyorrhea, trench mouth, and gingivitis.

DISPOSITION: 5–10–56. Default—destruction.

5076. Magnetic Ray device. (Inj. No. 19.)

APPLICATION FILED: On or about 7–22–44, in the Northern District of Texas, the United States attorney filed an application for an order which would require Frank B. Moran, t/a Magnetic Ray Co., Dallas, Tex., to show cause why he should not be punished for criminal contempt of the permanent injunction which had been entered against him on 6–30–42, as reported in notices of judgment on drugs and devices, No. 883.

CHARGE: It was alleged that the defendant, Frank B. Moran, had made a number of interstate shipments of the *Magnetic Ray device* in violation of the injunction.

DISPOSITION: An order to show cause was entered on 7–22–44, and in response thereto, an answer was filed by the defendant. The case came on for trial before the court without a jury on 8–10–44, and at its conclusion, the court handed down the following opinion, findings of fact, conclusions of law, and sentence:

ATWELL, *District Judge:* "On June 30, 1942, this injunction was granted under the statute. The Defendant, Frank B. Moran, individually and doing business as Magnetic Ray Company, and his agents, employees, representatives and all others acting by or under his direction and authority, and all persons, firms, partnerships, companies, corporations and their representatives, officers, servants, agents, employees in active concert or participating with defendant herein, be and are hereby perpetually enjoined and restrained from in any manner or by any device, directly or indirectly, further introducing or delivering for introduction into interstate commerce, or causing introduction or delivery for introduction into interstate commerce, of any device labeled 'Magnetic Appliance' or 'Magnetic Ray Instrument' or a similar device, similarly labeled in the manner and form of the aforesaid Magnetic Ray Instrument.

"From correspondence introduced at this trial the defendant represented that the injunction was a farce; it also shows that he sent a pamphlet out attacking the Court for issuing the restraint, and in the correspondence he advised that he appealed from that decision, and that it would be reversed, that the action of the court would be reversed. There was never any appeal from it, and he knew it. He knew very well that the injunction was against him, and the testimony shows here not only a contumacious attitude on the part of the defendant, but a determination to go forward with his business, and to carry it forward. He has been well represented at this trial, and guided in a manner that might have saved him from the predicament he is in if he had had that guidance at an earlier period.

"Assuming, without testimony, that the number of his so-called magnetic belts is as indicated by the number of those manufactured, and that he has gotten twenty dollars apiece for them, he would now have received $133,760.00 for the 6,688 of these so-called magnetic belts sold. The testimony does not show whether he started out with No. 1 or not, but it does show that No. 6688 has been introduced in interstate commerce. The lady testified, according to my recollection, substantially, that she made certain parts of this identical instrument. The testimony at the trial disclosed that a number of reputable physicians testified that the claim as to the curative powers of this so-called magnetic instrument were untrue. The Court, however, taking the side of the defendant, and not against the defendant, suggested that the Holy Writ was authority for the statement that if one believed he was healed, that he had the right to testify to such healing, and with that thought in mind, allowed the defendant to introduce his testimony, even though physicians testified that the instrument could not and would not do what the defendant claimed it would do. But one who is suffering from an ailment and comes up and says 'I am cured' certainly has the right to be heard, and the record in that case will show that the Court gave the defendant the benefit of that consideration.

"I am extremely careful in a contempt proceeding to discover contumacy, the determination to avoid and not follow the restraint issued by the Court, before punishment is inflicted. That appears here to be big, and this defendant has deliberately gone forward in his business without regard for the restraint, except to seek to cover up his actions by duplicity in a number of manners and matters, as best he could, to avoid discovery.

"Now there is this to be said for him: he is an elderly man, about seventy-nine years of age. The evidence does not disclose his pecuniary capacity, and I do not know whether he has funds to respond to a substantial fine or not, but this statute is a wholesome statute. I remember when it was placed on the books, and the paragraph to which Mr. McCutcheon now alludes with reference to where the Commissioner may issue a warning, has nothing to do with a case of this sort, as a reading of the statute will disclose. It does have a place in a certain part of the original investigation, but here is a remedy which was sought by the Government, and the Government secured the appropriate restraint at the hands of the Court and it must be obeyed. The punishment is in the hands of the Chancellor, who must be quick to discover that which is right and just, and I can hardly think of a more salutary road for the Government to travel than one which prevents the trusting to become the prey, if I may use that rather harsh word, of one who seeks funds. One of them is a man who comes and says he has gone into business with the instrument, himself limited apparently intellectually and perhaps in other ways, and he sends a check of rather good size for a sizeable order of the machines, and wrote that he could do a thriving business among the people in his section of the country, etc. It is unnecessary, I think, to go farther in that direction.

"I find as findings of fact:

"(1) That the defendant has violated the injunction.

"(2) That he knew he was violating the injunction, and did so on purpose.

"As a result of that, and as conclusions of law, I hold him guilty of contempt, and I fix his punishment at a fine of seven hundred and fifty dollars, and ten days in the county jail, the imprisonment to continue until the fine is paid.

"I have thought seriously about the costs the Government has been put to in this case. Witnesses who come from long distances cost money, and the defendant claims he was doing business from Maine to California, which challenges the Government in a sense. I believe in view of the fact that there is no disclosure of ability to respond, that this amount is rather substantial,

and that will be the judgment of the Court. Draw the Judgment, to be okayed by Mr. McCutcheon, saving such exceptions as may be desired, Mr. District Attorney."

5077. Magnetic Ray device. (Inj. No. 19.)

APPLICATION FILED: On or about 6–7–46, in the Northern District of Texas, the United States attorney filed an application for an order which would require Frank B. Moran, t/a Magnetic Ray Co., Dallas, Tex., to show cause why he should not be punished for criminal contempt of the permanent injunction which had been entered against him on 6–30–42, as reported in notices of judgment on drugs and devices, No. 883.

CHARGE: It was alleged that the defendant, Frank B. Moran, had made interstate shipments of the *Magnetic Ray device* on 1–29–45 and 2–19–45 in violation of the injunction.

DISPOSITION: 6–14–46. The defendant appeared before the court for a hearing, and at the conclusion thereof and after consideration of the pleadings and evidence and argument of counsel, the court found the defendant guilty of contempt and fined him $100, plus costs.

5078. Radioactive ore. (F. D. C. No. 37669. S. No. 16–098 M.)

QUANTITY: 6 100-lb. bags of *radioactive ore*, 105 9" by 12" canvas pads packed with *radioactive ore*, and 200 empty 9" by 12" canvas pads at Seattle, Wash., in possession of George Kosmos.

SHIPPED: On various dates during 1953, from McCall, Idaho.

LABEL IN PART: (Pad) "Cosmos Radioactive Pad."

ACCOMPANYING LABELING: Placards headed "The Radioactive Material in the Cosmos Radioactive Pad," "Arthritis? Bursitis?" and "Idaho Bursitis? Arthritis? Rheumatism? * * * Get the Cosmos Pad"; a copy of the 1–21–55 issue of Colliers Magazine; and 5 testimonial letters contained in a leather bound ring binder.

RESULTS OF INVESTIGATION: The *radioactive ore* had been shipped in bulk to Seattle, Wash., and upon its receipt by the consignee, a portion was repacked into the pads.

LIBELED: 2–24–55, W. Dist. Wash.

CHARGE: 502 (a)—the labeling accompanying the article, while held for sale, contained false and misleading representations that the article would provide an adequate and effective treatment for arthritis, bursitis, rheumatism, neuritis, sinus trouble, and soreness of hands, wrists, forearms, and back.

DISPOSITION: 9–24–56. Consent—destruction.

DRUGS FOR VETERINARY USE

5079. Chick'n Tee. (F. D. C. No. 38738. S. No. 16–328 M.)

QUANTITY: 3 1-gal. btls., 45 1-qt. btls., 71 1-pt. btls., and 42 6-oz. btls. at Portland, Oreg.

SHIPPED: Between 10–3–55 and 12–9–55, from Omaha, Nebr., by Gland-O-Lac Co.

LABEL IN PART: (Btl.) "Gland-O-Lac * * * Chick'n Tee For The Drinking Water * * * Active Ingredient: Piperazine Hexahydrate. . . . 14.04% Inert Ingredients: Water and coloring. . . . 85.96%."